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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 403

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT FOR PEOPLE OF THE STATE OF ILLINOIS, DEFENDANT IN ERROR.

WILLIAM H. STEAD,
Attorney General of the State of Illinois.
EDWIN M. ASHCRAFT,
Of Counsel.

Geo. Rozmeta Co., Printer, Chicago.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 103

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT FOR PEOPLE OF THE STATE OF ILLINOIS, DEFENDANT IN ERROR.

STATEMENT OF FACTS.

This was originally a proceeding commenced before the County Judge of Cook county, Illinois, by the People of the State of Illinois to collect the inheritance tax due under the last will and testament of Fanny Speed, deceased, under an act of the legislature of the State of Illinois known as "An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895.

At the time of her death Fanny Speed was a resident of the State of Kentucky and owned an undivided one-half interest in certain real estate in the City of Chicago, which interest was appraised at the sum of $210,000. One-half of this undivided one-half interest was devised by her will to the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, the plaintiff in error, a corporation organized under and existing by virtue of the laws of the State of Kentucky with power "to form an educational fund to be styled the Centenary Educational Fund for the promotion of literature, education, art, morality and religion within the bounds of said conference, to be held and used exclusively for educational and religious purposes in the State of Kentucky."

An inheritance tax of $6,280.50 was assessed against the plaintiff in error based upon the value of the interest in said real estate received by it under decedent's will, and to which assessment the plaintiff in error objected upon the ground that by reason of the nature of its organization it was exempt from said tax under an act of the legislature of the State of Illinois approved May 10, 1901, amending the act entitled "An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, and which amendatory act is as follows:

> "When the beneficial interest of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent, or charitable purpose, or to any trustee, bishop, or minister of any church or religious denomina-

tion, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members."

The County Judge denied the exemption claimed by plaintiff in error on the ground that the amendatory act of 1901 did not apply to corporations organized out of the State of Illinois, and entered an order assessing the tax. Plaintiff in error appealed to the County Court of Cook County, where a similar order was entered, and from the order of the County Court prosecuted its appeal to the Supreme Court of the State of Illinois. The Supreme Court of Illinois found that the amendatory act of 1901 did not exempt corporations organized out of the State of Illinois; that by reason of such construction the amendatory act was not repugnant to the Fourteenth Amendment to the Constitution of the United States, and that, therefore, the plaintiff in error was not entitled to the exemption claimed by it under the amendatory act, and affirmed the judgment of the County Court of Cook County, to reverse which order of affirmance the plaintiff in error has brought this matter to this court by writ of error.

BRIEF.

I.

IF PLAINTIFF IN ERROR SEEKS TO REVERSE THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS ON THE GROUND THAT ITS CONSTRUCTION OF THE AMENDATORY ACT OF 1901 IS ERRONEOUS AND REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES WITHOUT DRAWING INTO QUESTION THE VALIDITY OF THE ACT, THEN THERE IS NO FEDERAL QUESTION INVOLVED, THIS COURT IS WITHOUT JURISDICTION AND THE WRIT OF ERROR SHOULD BE DISMISSED.

Section 709, U. S. Revised Statutes.

Santa Cruz County Supervisors v. *Santa Cruz R. R. Co.*, 111 U. S., 361.

Baltimore & Potomac R. R. Co. v. *Hopkins*, 130 U. S., 210.

United States v. *Lynch*, 137 U. S., 280.

Sage v. *Louisiana Board of Liquidation*, 144 U. S., 647.

Morley v. *L. S. & M. S. Ry. Co.*, 146 U. S., 162.

Marchant v. *Pennsylvania R. R. Co.*, 153 U. S., 380.

Central Land Co. v. *Laidley*, 159 U. S., 103.

Union National Bank v. *Louisville, N. A. & C. Ry. Co.*, 163 U. S., 325.

Turner v. *Wilkes Co. Commissioners*, 173 U. S., 461.

Johnson v. *New York Life Ins. Co.*, 187 U. S., 491.

II.

IF PLAINTIFF IN ERROR SEEKS TO REVERSE THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS UPON THE GROUND THAT THE AMENDATORY ACT OF 1901, AS CONSTRUED BY THE SUPREME COURT OF THAT STATE, IS INVALID BECAUSE REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THEN

(A) IN DETERMINING THE VALIDITY OF THE AMENDATORY ACT OF 1901, THIS COURT SHOULD FOLLOW THE CONSTRUCTION PLACED UPON THAT ACT BY THE SUPREME COURT OF ILLINOIS.

Machine Co. v. *Gage*, 100 U. S., 676.

Chicago, Milwaukee & St. Paul Ry. Co. v. *Minnesota*, 134 U. S., 418.

Missouri Pacific R. R. Co. v. *Nebraska*, 164 U. S., 403.

Ludeling v. *Chaffe*, 143 U. S., 301.

Morley v. *L. S. & M. S. Ry. Co.*, 146 U. S., 162.

Illinois Central R. R. Co. v *Illinois*, 163 U. S., 142.

Noble v. *Mitchell*, 164 U. S., 367.

Osborne v. *Florida*, 164 U. S., 650.

New York State v. *Roberts*, 171 U. S., 658.

Covington v. *Kentucky*, 173 U. S., 231.

Turner v. *Wilkes County Commissioners*, 173 U. S., 461.

Gulf & Ship Island R. R. Co. v. *Hewes*, 183 U. S., 66

Western Union Telegraph Co. v. *Gottlieb*, 190 U. S., 412.

(B) THE CONSTRUCTION OF THE AMENDATORY ACT OF 1901 BY THE SUPREME COURT OF ILLINOIS IS CORRECT.

Catlin v. *Trustees*, 113 N. Y., 133.

Prime's Estate, 136 N. Y., 347.

Balleis' Estate, 144 N. Y., 134.

Minot v. *Winthrop*, 162 Mass., 113.

Alfred University v. *Hancock*, 46 Atl., 178 (N. J. Prerog. Ct.)

United States v. *Perkins*, 163 U. S., 625.

People v. *Western S. F. Society*, 87 Ill., 246.

Theological Seminary v. *Illinois*, 188 U. S., 662.

(c) THE AMENDATORY ACT OF 1901, AS CONSTRUED BY THE SUPREME COURT OF ILLINOIS, IS NOT REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Blake v. *McClung*, 172 U. S., 239.

Kochersperger v. *Drake*, 167 Ill., 122.

Billings v. *People*, 189 Ill., 472 (188 U. S., 97).

Magoun v. *Illinois Trust & Savings Bank*, 170 U. S., 283.

United States v. *Perkins*, 163 U. S., 625.

Blackstone v. *Miller*, 188 U. S., 189.

Kidd v. *Alabama*, 188 U. S., 730.

Giozza v. *Tiernan*, 148 U. S., 657.

Davidson v. *New Orleans*, 96 U. S., 97.

Merchants' Bank v. *Pennsylvania*, 167 U. S., 461.

Bells Gap Railroad v. *Pennsylvania*, 134 U. S., 232.

United States v. *Fox*, 94 U. S., 315.

Humphreys v. *State*, 70 Ohio St., 67.

Central Land Co. v. *Laidley*, 159 U. S., 103.

Marchant v. *Pennsylvania Railroad Co.*, 153 U. S., 380.

Campbell v. *California*, 200 U. S., 87.

(D) IF THE AMENDATORY ACT, AS CONSTRUED BY THE SUPREME COURT OF THE STATE OF ILLINOIS, IS REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THEN THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS SHOULD BE AFFIRMED.

ARGUMENT.

I.

IF PLAINTIFF IN ERROR SEEKS TO REVERSE THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS ON THE GROUND THAT ITS CONSTRUCTION OF THE AMENDATORY ACT OF 1901 IS ERRONEOUS AND REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES WITHOUT DRAWING INTO QUESTION THE VALIDITY OF THE AMENDATORY ACT, AS CONSTRUED BY THE SUPREME COURT OF ILLINOIS, THEN THERE IS NO FEDERAL QUESTION INVOLVED, THIS COURT IS WITHOUT JURISDICTION, AND THE WRIT OF ERROR SHOULD BE DISMISSED.

Plaintiff in error invokes the jurisdiction of this court upon the following grounds.

First, that by the order of affirmance of the Supreme Court of Illinois, and the proceedings prior thereto, "there was drawn in question *the validity of an authority* exercised under the statute of Illinois on the ground that the authority, as exercised, was repugnant to the Constitution of the United States, and the decision is in favor of the validity of the authority as exercised;" and, second, because "a right, privilege or immunity was claimed under the Constitution of the United States by plaintiff in error, and the decision is against the right, privilege or immunity especially set apart or claimed by said

plaintiff in error." (See petition for writ of error, Rec., 61 and 62; Trans., 34.)

But two errors are assigned upon this record, namely,

> "First, the court erred in holding this plaintiff in error liable to said tax of $6,280.50, because the *imposition of a tax* upon this plaintiff in error, while corporations organized for like purposes under the laws of the State of Illinois are exempt, *renders the act of May 10th, 1901,* amending an act entitled 'An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same,' approved June 15, 1895, *void as to this plaintiff in error, and is in conflict with the fourteenth amendment* to the Constitution of the United States in that it abridges the privileges and immunities of this plaintiff in error, which is a citizen of the United States, deprives the plaintiff in error of its property without due process of law and denies to this plaintiff in error the equal protection of the laws;
>
> "Second, the court erred in holding said corporation liable to said tax of $6,280.50, for that said corporation is, by reason of its organization and the purposes of said organization, as shown by the record in this case, exempt from such tax under the Act of May 10, 1901, amending an act entitled, 'An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same,' approved June 15, 1895."

See assignment of errors on petition for writ of error (Rec., 66, 67; Trans., 36).

The second error will stand or fall with the first, and the first error is therefore the only one necessary to be considered at this time.

Defendant in error claims a right to impose a tax upon the plaintiff in error under the original inheritance tax law held to be constitutional by this court in the case of *Magoun* v. *Illinois Trust & Savings Bank,* 170 U. S., 283. The plaintiff in error claims that it is exempt from such tax by virtue of the amendatory act of 1901, which provided that when the beneficial interests of any property should pass to any hospital, religious and educational purpose, etc., the same should not be subject to the tax provided for in the original act.

The Supreme Court of Illinois held that it was not the intention of the legislature in enacting the amendatory act of 1901 to extend the exemptions therein provided for to corporations created under the laws of another state, and then held that the amendatory act thus construed was not repugnant to the Fourteenth Amendment to the Constitution of the United States, and consequently held that the imposition of the tax in question upon the plaintiff in error was authorized by the statutes.

If, as we shall contend, this court has no jurisdiction in this matter except to pass upon the validity of the amendatory act of 1901 *as construed,* then we are unable to perceive what possible interest the plaintiff in error can have in the prosecution of this proceeding, for, if, *as construed,* this amendatory act is in conflict with the Fourteenth Amendment, all right to the exemption thereunder of not only the plaintiff in error, but of all other beneficiaries named in the amendatory act, both local and foreign, must fail. It is not clear whether counsel for plaintiff in error seek to attack only the construction of the

amendatory act or the validity of the amendatory act as construed. The error assigned is in effect that the *imposition* of a tax upon the plaintiff in error makes the amendatory act void as to plaintiff in error, and is in conflict with the Fourteenth Amendment; in other words, that the *imposition* of the tax and not the *statute* itself is in conflict with the Fourteenth Amendment. In the petition for a writ of error plaintiff in error invokes the jurisdiction of this court because the validity of an *authority under the statute,* not the validity of the *statute,* was drawn into question by the judgment of the Supreme Court of Illinois.

Inasmuch as the Supreme Court of Illinois has held in effect that the imposition of the tax and the authority exercised in imposing the tax were supported by the statutes of the state, it would seem that the only question left for this court would be the validity of the act under which this authority was exercised and the imposition of the tax justified. Yet, owing to the lack of possible interest of plaintiff in error in a determination of the constitutionality of the amendatory act as construed, and owing to the uncertain meaning of the assignment of errors in connection with the grounds for the writ of error stated in the petition, and being unadvised as to just what position will be taken by counsel for plaintiff in error upon this question in their argument, we have deemed it advisable to base the first branch of our argument upon the assumption that plaintiff in error is in reality only attacking the *construction* of the amendatory act rather than its validity as construed.

And if, regardless of this lack of interest in the outcome, plaintiff in error is in fact submitting to this court the validity of the amendatory act as construed, then the court may disregard the remainder of this branch of our argument as not pertinent to the issue, as in part second hereof we shall devote our argument to the merits of the issue upon that question.

The jurisdiction of this court to review the decisions of the highest court of a state is governed by section 709 of the *Revised Statutes*, with which this court is so familiar that it is unnecessary to quote its provisions. The writ in this case was issued upon two of the grounds provided in this section. First, because the judgment of the Supreme Court of Illinois was in favor of the validity of an authority the exercise of which was claimed to be repugnant to the Constitution of the United States, and second, because the decision was against a right, privilege or immunity claimed under the Constitution of the United States. The *authority* referred to must mean nothing other than the right of the State of Illinois to impose the tax in view of the amendatory act granting the exemption in question, and the *right, privilege and immunity* claimed refer to the right of plaintiff in error to the same exemption granted to similar corporations organized within the State of Illinois. The Supreme Court of Illinois has held that the right to impose the tax and to refuse the exemption to this plaintiff in error is authorized by the statutes of the State, and we contend that this court is without jurisdiction to reverse or review this decision except upon

the question as to whether or not the amendatory act, as thus construed, is repugnant to the Constitution of the United States, and if plainiff in error does not deny the validity of the amendatory act, but only attacks the construction of it by the Supreme Court of Illinois, then this writ of error should be dismissed.

Santa Cruz County Supervisors v. *Santa Cruz R. R. Co.*, 111 U. S., 361, was before this court upon a motion to dismiss a writ of error to the Supreme Court of the State of California, and Chief Justice Waite delivered the following opinion:

> "This was a suit brought by the Santa Cruz Railroad Company to require the Board of Commissioners of the County of Santa Cruz to deliver certain bonds claimed to be due from the county under a contract with the railroad company. The defenses were:
>
> "1. That the contract was unilateral and therefore not binding on the county;
>
> "2. That the Board of Supervisors exceeded its authority in making the contract, and
>
> "3. That a repealing statute passed after the contract was entered into took away the power of the board to make any further delivery of the bonds.
>
> "No objection whatever was made to the validity of the statute under which the board assumed to act in making the contract. The whole defense rested on the construction and effect to be given to certain statutes which no one denied the constitutional power of the legislature to enact.
>
> "The ground of federal jurisdiction relied upon in the brief of counsel for the county is that by the issuance of the bonds demanded in this proceeding the state would deprive the taxpayers of the County of Santa Cruz of property without due process of law, contrary to the

right, privilege or immunity secured by the first section of the Fourteenth Amendment to the Constitution of the United States.

"That was not the question presented to or decided by the state court. In that court the inquiry was whether the proceedings of the board to charge the county were according to law, not whether the law under which the proceedings were had was constitutional and binding upon the tax-payers. The state court decided that the proceedings were in accordance with the requirements of the law, and thus created an obligation on the part of the county to deliver the bonds, which was not discharged by the repealing statute relied on. This decision involved no question of federal law and is not reviewable here."

The motion to dismiss was granted.

While the Supreme Court of Illinois did, in this case, pass upon the validity of the amendatory act as construed, yet it should be borne in mind that for the purpose of this branch of this argument we are assuming that plaintiff in error is not claiming before this court that the amendatory act itself is unconstitutional.

Baltimore & Potomac R. R. Co. v. *Hopkins,* 130 U. S., 210, before this court on writ of error to the Supreme Court of the District of Columbia, was an action brought by Hopkins against the railroad company for injuries inflicted by the company permitting cars to remain on the public street in front of his premises for an unreasonable length of time. The railroad company claimed that it possessed and exercised authority by virtue of grants from the United States to do all that it did do in the premises, the validity of which authority it was insisted

was denied by the court. A portion of the opinion delivered by Chief Justice Fuller was as follows, page 223:

> "That part of original paragraph 25, and of the act of 1867, as to decisions in favor of the validity of a statute of, or of an authority exercised under, any state, when drawn in question on the ground of their being repugnant to the Constitution, treaties or laws of the United States, has been frequently passed upon, and the distinction between the construction of a statute, or the extent of an authoritiy, and the validity of a statute, or of an authority, pointed out. Thus in *Commercial Bank of Cincinnati* v. *Buckingham,* 5 How., 317, where a general law had declared all banks liable to pay six per cent interest on their notes when they had refused payment on demand, and a subsequent act, incorporating the bank in question, provided for the payment of twelve per cent, and the question was whether the bank was liable to pay eighteen, this court held that the question submitted to and decided by the state court was one of construction and not of validity. There both the prior and subsequent statutes were admitted to be valid under any construction of them, and therefore, no construction placed by the state court on either of them could draw in question its validity, as being repugnant to the Constitution of the United States, or any act of Congress.
>
> "In *Lawler* v. *Walker,* 14 How., 149. where, in 1816, the legislature of Ohio had passed an act to prohibit the issuing and circulation of unauthorized bank paper, and in 1839 an act amendatory thereof, and the question arose whether or not a canal company incorporated in 1837 was subject to these acts, it was held that the Supreme Court of Ohio, in deciding that it was, only gave a construction to an act of Ohio, which neither of itself or by its application in-

volved in any way a repugnancy to the Constitution of the United States by impairing the obligation of a contract.

"Whenever the power to enact a statute, as it is by its terms or is made to read by construction, is fairly open to denial and denied, the validity of such statute is drawn in question, but not otherwise.

"In *Millingar* v. *Hartupee*, 6 Wall., 258, 261, 262, it was held that the word 'authority' stands upon the same footing with 'treaty' or 'statute,' and, said the court, through Chief Justice Chase:

" 'Something more than a bare assertion of such an authority seems essential to the jurisdiction of this court. The authority intended by the act is one having a real existence derived from competent governmental power. If a different construction had been intended Congress would doubtless have used fitting words. The act would have given jurisdiction against claims and authority under the United States. In many cases the question of the existence of an authority is so closely connected with the question of its validity that the court will not undertake to separate them, and in such cases the question of jurisdiction will not be considered apart from the question upon the merits, or except upon hearing in regular order, but where, as in this case, the single question is not of the validity but of the existence of an authority, and we are fully satisfied that there was and could have been no decision in the state court against any authority under the United States existing in fact, and that we have therefore no jurisdiction of the case brought here by writ of error, we can perceive no reason for retaining it upon the docket.' "

And on page 225:

"The case at bar does not involve the exercise of an authority under the United States in the sense of an authority to act for the gov-

ernment, but it is claimed that the railroad company acted under certain statutes of the United States authorizing such action, and that the validity of these statutes, or of authority under them, was denied."

Page 226:

"The jury were told that all stoppage of trains and shifting of cars necessary for carrying cars out of its freight depot, over the different tracks, for the purpose of making up freight trains, were lawful. The right of the railroad company to establish freight stations, or to lay as many tracks as its president and board of directors might deem necessary, was not questioned, but the court also held that the company was not justified in occupying the public streets for the purposes of a freight yard as such, because the various statutes bearing upon the matter did not authorize such occupation, with which conclusion we are inclined to agree, though we forbear a determination of the point until presented in a case properly pending before us. The validity of the statutes and the validity of the authority exercised under them, are, in this instance, one and the same thing, and 'the validity of a statute,' as these words are used in this act of Congress, refers to the power of Congress to pass the particular statute at all, and not to mere judicial construction as contradistinguished from a denial of legislative power. In our opinion the validity of no act of Congress, or authority under the United States, was so drawn in question here as to give us jurisdiction, and therefore, as the amount of the judgment did not exceed $5,000, the writ of error must be dismissed."

United States v. *Lynch*, 137 U. S., 280, also before this court upon a writ of error to the Supreme Court of the District of Columbia, was an applica-

tion for a mandamus to compel the Fourth Auditor and Second Comptroller to audit and allow a claim for mileage upon the ground that the statute authorizing such mileage was so plain as not to admit of construction. It was contended that this court had jurisdiction because the validity of an authority exercised under the United States was drawn in question. The court say, page 285:

> "It is now argued that the duty of the Fourth Auditor and of the Second Comptroller, under the last clause of Section 2 of the Act of 1835, and the decision of this court in relation to it, was merely ministerial, and that by the disallowance of relator's claim for mileage these officers exercised a discretion which they did not possess; that this was an invalid exercise of an authority under the United States; and that hence the validity of the authority was drawn in question. In order to justify this position, however, the validity of the authority must have been drawn in question directly and not incidentally. The validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority, every time an act done by such authority is disputed. The validity of a statute or the validity of an authority is drawn in question when the existence, or constitutionality, or legality of such statute or authority is denied, and the denial forms the subject of direct inquiry."

See, also, *Sage* v. *Louisiana Board of Liquidation*, 144 U. S., 647.

The case of *Morley* v. *Lake Shore & Michigan Southern Railway Co.*, 146 U. S., 162, was a writ of error to the Court of Appeals of the State of New York to reverse a decision of that court hold-

ing that a judgment obtained before the passage of the act of the legislature of that state, reducing the rate of interest, was not a contract or obligation excepted from the operation of the act. The court say, page 166:

> "The first question we have to consider is the effect to be given to the saving clause contained in the first section of the act of June 20, 1879, which provides that nothing therein contained shall be so construed as to in any way affect any contract or obligation made before the passage of that act. This question is answered for us by the decision of the Court of Appeals of New York in this very case, holding that this saving clause is not applicable in the case of a judgment like the plaintiff's."

And on page 167:

> "The meaning of a state statute, declared by the highest court of a state, is conclusive upon this court. *Randall* v. *Brigham,* 7 Wall., 523, 541. If, then, the law as enacted by the legislature, and construed by the judiciary, will be the law of the state, it follows that, as to the proper construction of the statute, and as to what should be regarded as among its terms, no federal question could arise. The most that could be claimed would be that although the statute of the state was unobjectionable, yet the state court had erroneously construed it. This would constitute a purely judicial error, involving no question of the validity of the law, which latter question alone is, by the plainest possible terms of the constitution and judiciary act, subject to investigation here. Assuming, then, that the statute in question was correctly construed by the New York court, our only inquiry must be as to the validity of the statute itself, as construed by the state court."

In *Marchant* v. *Pennsylvania R. R. Co.*, 153 U. S., 380, which was a writ of error to the Supreme Court of Pennsylvania, it was said by this court, page 385:

> "We are not authorized to inquire into the grounds and reasons upon which the Supreme Court of Pennsylvania proceeded in its construction of the statutes and constitution of that state, and if this record presented no other question except errors alleged to have been committed by that court in its construction of its domestic laws, we should be obliged to hold, as has often been held in like cases, that we have no jurisdiction to review the judgment of the state court, and we should have to dismiss this writ of error for that reason."

In *Johnson* v. *New York Life Insurance Co.*, 187 U. S., 491, the writ of error to the Supreme Court of the state of Iowa was dismissed, and it was held that where the courts of one state fully consider the statute of another state, and the case turns upon the construction of the statute, and not upon its validity, due faith and credit is not denied by one state to the statute of another state, and the manner in which the last is construed is not necessarily a federal question.

In *Central Land Co.* v. *Laidley*, 159 U. S., 103, a writ of error to the Supreme Court of Appeals of the State of Virginia was dismissed on the ground that this court had no jurisdiction of a writ of error to the state court on the ground that the obligation of a contract has been impaired, when the validity of the statute under which the contract was made is admitted, and the only question was as to its construction by the state court. See, also, *Turner* v. *Wilkes County Commissioners*, 173 U. S., 461.

We therefore contend that the effect of the construction placed upon the amendatory act of 1901, by the Supreme Court of Illinois, was to incorporate that construction into the wording of the act, so that the act, as it now stands before this court, is to be construed the same as if, in so many words, it excluded foreign corporations from the benefit of the exemptions therein provided for, and that unless plaintiff in error denies the validity of the amendatory act thus construed, and submits that question to this court, there is nothing for this court to consider, and the writ of error should be dismissed upon the doctrine of the authorities above cited.

II.

IF PLAINTIFF IN ERROR SEEKS TO REVERSE THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS UPON THE GROUND THAT THE AMENDATORY ACT OF 1901, AS CONSTRUED BY THE SUPREME COURT OF THAT STATE IS INVALID BECAUSE IN CONFLICT WITH THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THEN THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS SHOULD BE AFFIRMED.

We are unable to comprehend what object plaintiff in error hopes to accomplish in attacking the validity of the very act under which it must claim its right to the exemption. The Supreme Court of Illinois passed upon the validity of the act as construed, because plaintiff in error before that court claimed that the construction contended for by defendant in error would make the amendatory act unconstitutional. By passing upon the validity of the act the Supreme Court of Illinois decided a constitutional question, and it is only that question which can be brought before this court for review.

In their Assignment of Errors counsel for plaintiff in error claim that the *imposition* of the tax upon plaintiff in error, under the circumstances, is in conflict with the Fourteenth Amendment. The real meaning of this is, that the *refusal* to allow plaintiff in error the exemption provided by the amendatory act is in conflict with the Fourteenth Amendment.

Under the doctrine of the cases referred to in the first part of our argument, and those hereafter cited, plaintiff in error cannot complain of the refusal to allow it the exemption in question, or deny the validity of the authority under which the exemption is refused, without in fact drawing into question and denying the validity of the act itself under which the exemption is claimed.

Upon the theory, then, that plaintiff in error, in contending before this court that the imposition of the tax upon it while similar organizations within the State of Illinois are exempt, is in conflict with the Fourteenth Amendment, in fact, brings before this court for determination the validity of the amendatory act of 1901, as construed, we shall contend that the amendatory act, as construed, is not in conflict with the Fourteenth Amendment, and that the judgment of the Supreme Court of Illinois should be affirmed for the following reasons:

(A) IN DETERMINING THE VALIDITY OF THE AMENDATORY ACT OF 1901, THIS COURT SHOULD FOLLOW THE CONSTRUCTION PLACED UPON THAT ACT BY THE SUPREME COURT OF ILLINOIS.

In determining whether the amendatory act of 1901 is in conflict with the Fourteenth Amendment, the act must be construed in connection with the

interpretation placed upon it by the Supreme Court of Illinois. The act before this court in effect is one which extends an exemption to local corporations which is directly denied to foreign corporations.

It is universally recognized that the judicial department of every government is the appropriate organ for construing the legislative acts of that government, and the acts thus construed are considered the same as if the words of the construction were originally embodied in the act itself, and the construction becomes a part of the statute law. This rule has been so universally adopted by this court, in passing upon the validity of state statutes, that it would seem unnecessary to cite authorities in support of the rule.

Counsel for plaintiff in error, in asserting the amendatory act is unconstitutional, are obliged to do so solely upon the ground that the construction of the act has made it so. The position that, because the construction of the act has made it unconstitutional, the construction should be reversed is untenable. The construction placed by the Supreme Court of Illinois upon this act is binding upon this court, and this court cannot find that it was the intention of the Illinois legislature, in passing the act, to include foreign corporations in view of the decision of the Supreme Court of Illinois that such was not the intention, nor the true meaning of the act as passed.

In the case of *Machine Co.* v. *Gage*, 100 U. S., 676, the Supreme Court of Tennessee had decided that the law of that state, imposing an annual tax upon all peddlers of sewing machines, levied such tax upon all peddlers of sewing machines without re-

gard to the place of the manufacture of the machine. Upon writ of error from this court, this court held, page 677:

> "The sewing machines here in question were made in Connecticut. The Supreme Court of the state (Tennessee) held in this case that the law taxing the peddlers of sewing machines levied the tax upon all peddlers of sewing machines without regard to the place of growth or produce of material or manufacture. We are bound to regard this construction as correct, and to give it the same effect as if it were a part of the statute."

In *Illinois Central R. R. Co.* v. *Illinois*, 163 U. S., 142, it was claimed the statute of Illinois requiring railroad companies to stop their trains at county seats long enough to receive and let off passengers with safety amounted to an unconstitutional hindrance and obstruction of inter-state commerce and of the passage of the mails of the United States. This court held, upon writ of error to the Supreme Court of the State of Illinois, page 152:

> "The Supreme Court of the State, however, held that the statute not only required every train to stop at every county seat at which it arrived, but that, as Cairo was admitted to be a county seat, the statute required every train passing through the City of Cairo to go to and stop at the station in that city. The construction given to the statute in this particular by the state court does not involve any federal question and must be accepted by this court in judging the constitutionality of the statute. *Chicago, etc., Railway* v. *Minnesota*, 134 U. S., 418, 456.
>
> "But the decision that the statute so construed was not an unconstitutional interference with interstate commerce or with the carrying

> of the mails by the United States was a decision in favor of the validity of a state statute whose validity was drawn into question on the ground of its being repugnant to the Constitution and laws of the United States, as well as a decision against a right specially set up and claimed under the national Constitution and laws, and is therefore clearly reviewable by this court."

The court then proceeded to hold that the statute of Illinois, *as construed and applied by the Supreme Court of the state,* was unconstitutional.

Noble v. *Mitchell,* 164 U. S., 367, was a writ of error to the Supreme Court of the State of Alabama. The action below was originally instituted against the defendants, a firm of insurance agents doing business in the State of Alabama, to recover the loss under a fire insurance policy, under the provisions of a statute which made the local agents of a foreign insurance company which had not obtained a state license personally liable for the loss. The Supreme Court of Alabama affirmed the validity of the statute, and enforced its provisions against the plaintiffs in error despite their objection that the statute was repugnant to the Constitution of the United States. The statute in question originally included associations and partnerships as well as corporations. The Supreme Court of Alabama also held that by a subsequent amendment the act became separable in its provisions, and so far as applied to and imposed against foreign corporations it did not contravene any provision of the state constitution or of the Constitution of the United States. This court held, on page 372:

"This construction of the Alabama statute, although made by the Supreme Court of that state, it is urged, is erroneous, and we are invited to disregard it; but manifestly the interpretation of a statute of the State of Alabama by the Supreme Court thereof under the circumstances here presented is binding on us. *Dibble* v. *Bellingham Bay Land Co.*, 163 U. S., 63, 73; *Union Bank* v. *Louisville, New Albany, etc., Railway*, 163 U. S., 325, 331.

"Reading, then, into the Alabama statute the construction given thereto by the court of last resort of that state, the argument of the plaintiff in error amounts to this, that, although it is admitted that the law of the State of Alabama regulating the doing of insurance business by foreign corporations is not in conflict with the Constitution of the United States, nevertheless we should hold that it does violate that Constitution, because of another and separate law of Alabama, which, it is asserted, would be unconstitutional if it were before us for consideration. Of course, to state this proposition is to answer it."

In *Missouri Pacific Railway Co.* v. *Nebraska*, 164 U. S., 403, this court held, on page 414:

"The Supreme Court of Nebraska has construed this statute as authorizing the Board of Transportation to make the order questioned in this case, which required the railroad company to grant to the relators the right to erect an elevator upon its right of way at Elmwood station on the same terms and conditions on which it had already granted to other persons rights to erect two elevators thereon. *The construction so given to the statute by the highest court of the state must be accepted by this court in judging whether the statute conforms to the Constitution of the United States.*"

The act in question as construed was held to be in conflict with the Fourteenth Amendment to the Constitution.

In the case of *Osborne* v. *Florida,* 164 U. S., 650, the constitutionality of a statute of Florida imposing a tax upon express companies doing business in Florida was questioned on the ground that it violated the commerce clause of the Federal Constitution, and was not sufficiently determinate, definite and certain in its character upon which to ascertain the amount to be paid for licenses. This court held, page 654:

> "The particular construction to be given to this state statute is a question for the state court to deal with, and in such a case as this we follow the construction given by the state court to the statutes of its own state. *Leffingwell* v. *Warren,* 2 Black, 599; *People* v. *Weaver,* 100 U. S., 539, 541; *Noble* v. *Mitchell,* 164 U. S., 367, 372, and cases there cited.
>
> "In other words, this statute, as construed by the Supreme Court of Florida, does not exempt the express company from taxation upon its business which is solely within the state, even though at the same time the same company may do a business which is interstate in its character, and that as to the latter kind of business, the statute does not apply to or affect it. As thus construed we have no doubt as to the correctness of the decision that the act does not in any manner violate the Federal Constitution.
>
> "The second ground for holding the statute void is that it is not sufficiently determinate, definite and certain in its character upon which to ascertain the amount to be paid for licenses. This ground furnishes no reason for interference by this court. Whether the statute be sufficiently determinate or certain in its character upon which to ascertain the amount to be

paid for a licnese is a question of the construction of the state statute which does not necessarily involve a federal question, and the determination of the state court as to the proper construction and sufficiency of such a statute is conclusive upon us."

The case of *Western Union Telegraph Co.* v. *Gottlieb*, 190 U. S., 412, was a writ of error to the Supreme Court of the State of Missouri to reverse the judgment of that court upon a statute taxing the property of a telegraph company situated within the state. This court held, on page 425:

> "But it is contended that the method of assessment followed in those cases was sustained because they were prescribed by the legislature, and that in the case at bar the method adopted was not prescribed or authorized by the laws of Missouri. The answer is obvious. What the laws of Missouri authorized was competent for the Supreme Court of Missouri to decide, and it decided that the order of the board of equalization was legal under the constitution and statutes of the state. The decision, constituting, as it does, an interpretation of the constitution and laws of the state, is not open to dispute here."

See also *Chicago, Milwaukee & St. Paul Railway Co.* v. *Minnesota*, 134 U. S., 418, 456; *Ludeling* v. *Chaffe*, 143 U. S., 301, 305; *Morley* v. *Lake Shore & Michigan Southern Railway Co.*, 146 U. S., 162, 167; *New York State* v. *Roberts*, 171 U. S., 658, 661; *Covington* v. *Kentucky*, 173 U. S., 231, 237; *Turner* v. *Wilkes County Commissioners*, 173 U. S., 461, 463; *Gulf & Ship Island Railroad Co.* v. *Hewes*, 183 U. S., 66, 74, 75.

(B) THE CONSTRUCTION OF THE AMENDATORY ACT OF 1901 BY THE SUPREME COURT OF ILLINOIS IS CORRECT.

We believe it is safe to make the statement that all the text-books on the subject, and all the decisions, concur in holding that statutes of exemption, like that of 1901, unless they specifically provide for exempting nonresident institutions, are held not to do so, and are construed as exempting the institutions of the state only, and no distinction is to be found in the authorities in this regard between general and special taxation.

Dos Passos, in considering this subject, Section 36, 2nd Ed., says:

> "The general rule laid down by the courts under these statutes is that where the law provides for the exemption of corporations or associations from taxation it means to include domestic only and not foreign corporations."

There is no distinction between the statutes of other states and the statute of Illinois on this question.

In the case of *Catlin* v. *Trustees*, 113 N. Y., 133, it was held that under the Act of 1887 legacies to charitable and religious corporations, whether domestic or foreign, were not exempt from the collateral inheritance tax under the laws of New York. The laws of 1890, evidently adopted to extend the inheritance tax statute and make religious and charitable institutions exempt, provided:

> "Section 1. Any religious, educational, Bible, missionary, * * * or charitable corporation * * * may take and hold in its own right * * * property. * * * The personal estate of such corporations shall be ex-

empt from taxation and the provisions of Chapter 483 of the Laws of 1885, entitled An Act to Tax Gifts, Legacies, and Collateral Inheritances in certain cases, and the acts amendatory thereto, shall not apply thereto nor to any gifts to any such corporation by grant, bequest or otherwise."

It will be observed that this statute is a broad one and exempts religious and educational institutions, not only from general taxation, but from the act to tax gifts, legacies, etc. It was this statute so amended that was before the court for construction *in re Prime's Estate,* 136 N. Y., 347, where the court say, at page 360:

"We are of opinion that a statute of a state granting power and privileges to corporations must, in the absence of plain indications to the contrary, be held to apply only to corporations created by the state and over which it has the power of visitation and control. Such is the natural interpretation of such legislation in the absence of a contrary intention appearing on the face of the Act. The law in such cases is dealing with its own creations, whose rights and obligations it may limit, define and control. * * *

"The argument that gifts for the promotion of charity, education and religion should be encouraged and should not be diminished by exactions of the state, presents a moral and political, rather than a judicial question. * * *

"It is the policy of society to encourage benevolence and charity. But it is not the proper function of a state to go outside of its own limits and devote its resources to support the cause of religion, education or missions for the benefit of mankind at large. The argument may have force that the state might consistently with its proper functions give immunity from taxa-

> tion to some of the foreign corporations engaged in the work of education or charity; but however this may be, we are convinced that the Statute of 1890 has no application to foreign corporations, and having made that conclusion our duty is ended."

The transfer act of New York, 1892, provided:

> "But any property heretofore or hereafter devised or bequeathed to any person who is a bishop or to any religious corporation shall be exempt from and not subject to the provisions of this act."

In *Balleis' Estate*, 144 N. Y., 132, certain nonresident religious institutions claimed the right to be exempt under this statute. It was urged in argument that the statute already exempted resident religious institutions under the Act of 1890 and that it was the intention of the legislature in the adoption of the amendment of 1892 exempting "any property * * * devise or bequest * * * to any religious corporation" to amend the statute so that nonresident religious institutions would be exempt. Judge Gray, in deciding this question, at page 134, says:

> "The prior act was undoubtedly concerned with the granting of privileges to domestic corporations, but the Act of 1892 was legislating with respect to subjects within the jurisdiction of the state and the provision modifying the legislation as it affected certain corporations must be considered in the light of an exercise of the sovereign power within territorial limits. In creating this particular plan for the taxation of all property transferred to others upon or in contemplation of the death of its owner, the declaration of an exemption in favor of religious corporations, even though it might al-

ready exist under previous legislation, was a wise, if a superfluous provision. To say that it was intended to include foreign corporations would be to imply the granting of a privilege by the legislature without sufficient indications of an intention so contrary to ordinary state policies and to usual statutory presumption. This we should not do. The legislation in question dealt with property within the state and imposed a tax in certain cases upon its transfer to other persons or to corporations. In proceeding thereupon to confer the privilege of an exemption from its provisions in the case of any religious corporation, the legislature must be deemed to have in mind those corporations which were the creation of the state and not those in which it had no interest and over which it had no control."

The first section of the inheritance tax statute of Massachusetts (laws of 1891) provides for the exemption of gifts, "to or for charitable, educational or religious societies or institutions, the property of which is exempt by law from taxation."

In *Minot* v. *Winthrop*, 162 Mass., 113, the ninth article of the will gave to the Congregational Church and to the St. Johns Episcopal Church in the State of New York $1,000 each, and it was claimed by these organizations that they were exempt under the laws of New York. The attorney general contended that the exemptions above noted, found in the first section of the Statute of Massachusetts, were confined to societies, the property of which is exempt from taxation by the laws of Massachusetts, and this contention was sustained, the court citing with approval *Prime's Estate* and other authorities.

The statute of New Jersey exempts churches, hospitals, orphan asylums, and all religious and char-

itable institutions and organizations, and by a subsequent act of 1898 this was extended to certain institutions, whether incorporated under the laws of New Jersey or not.

In the case of *Alfred University* v. *Hancock*, 46 Atl., 178, it was contended by the Alfred University that it was exempt. The inheritance tax act of New Jersey follows that of Massachusetts and in the first section imposing the tax, churches, hospitals, orphan asylums and all religious, benevolent and charitable institutions are exempted. Judge Reed, in deciding the case, says:

> "Conceding the charitable character of the institution, does the exemption apply to institutions located without the limits of the state of New Jersey? The overwhelming weight of authority is that where the legislature grants exemption from such a tax to corporations or organizations, it includes in the exemption only domestic corporations and organizations."

The court cited with approval *Catlin* v. *Trustees*, *Prime's Estate*, *Balleis' Estate*, and many other authorities, and concludes:

> "On the strength of these authorities I shall hold that the exception in the Act of 1894 does not cover the present bequest to the Alfred University, a corporation and institution situated in the State of New York."

In *United States* v. *Perkins*, 163 U. S., 625, a bequest was made to the United States and the United States claimed it was exempt as a corporation "exempt by law from taxation" within the meaning of the New York statute. After citing and considering a number of the cases before referred to, Justice Brown says, at page 630:

"If the ruling of the Court of Appeals of New York in this particular case be not absolutely binding upon us, we think that, having regard to the purpose of the law to impose a tax upon inheritance, the legislature intended to allow an exemption only in favor of such corporations as it had itself created and which might reasonably be supposed to be the special objects of its solicitude and bounty."

The act of Illinois of 1872 provides for the exemption from taxation of *all* property of institutions of purely public charity when actually and exclusively used for such charitable purposes.

The Western Seamen's Friend Society was organized for the dissemination of moral and religious instruction and other charities among sailors and laborers doing business on our Western waters, and as such claimed to be exempt from taxation. Of the right of this nonresident corporation to be exempt from taxation, in *People* v. *Western S. F. Society*, 87 Ill., 246, Judge Scott says, at page 249:

"But if a broader construction could be given to the statute and it could be held to embrace all institutions that dispense charity, whether public or private, and the property used exclusively for that purpose, there is still a valid reason why the property in this case is not exempt from its just proportion of taxation. The statute must in any event be understood to have exclusive reference to institutions or corporations created by the laws of this state and not to foreign corporations that may choose to locate branches in this state. It is only by that comity that exists between states that foreign corporations are permitted to transact in this state the business for which they were created. The General Assembly has manifested no intention to relieve the property situated in this

> state belonging to such corporations, no matter what their business may be, whether charitable or otherwise, from the burdens of taxation, even if it possesses the power under the constitution to do so."

This section of the Revenue Act of 1872 is as broad as the Act of 1901, which is relied upon in this case. Other authorities of a similar import could be cited. The contention that a distinction should be made between the Act of 1901, exempting educational and other institutions from the inheritance tax, and the acts of New York, New Jersey and Massachusetts, construed in the cases cited, is not sustained. In New York the amendment was made for the express purpose of exempting religious and educational institutions from the operation of the inheritance tax statute, and that statute is referred to in the act and the same may be said of the Act of 1892, while in Massachusetts and New Jersey the provision for exempting these institutions is in the first clause of the statute imposing the tax and in each case the language is as broad as the Illinois act.

The contention that a distinction should be made between statutes imposing a general tax and a statute of this character is not well founded. It is conceded where a tax is imposed, and especially a special tax, that the state or the taxing power must be able to point to express authority for imposing the tax and that taxation is a hard and heavy burden and that the law should be strictly construed in favor of the tax payer, but when there is a statute imposing a tax upon a general class of persons or upon a general class of property, as in this case, upon

all property taken by corporations, and if a corporation or party taking such property claims an exemption, then the burden is upon such corporation or party to show clearly they come within the provisions of such exemption.

In *Theological Seminary* v. *Illinois*, 188 U. S., 662, where exemption was claimed under the charter of the seminary, Justice Peckham, in announcing the rule of construction in this regard, said, at page 672:

> "The rule is that in claims for exemptions from taxation under legislative authority, the exemption must be plainly and unmistakably granted; it cannot exist by implication only; a doubt is fatal to the claim."

It is insisted, however, that this controversy is quite immaterial in this case, as there is no doubt remaining to be solved. We have a statute in Illinois exempting certain institutions from the payment of an inheritance tax. By all authorities, such exemptions are not extended to foreign or nonresident corporations, unless so expressly provided in the statute, and there is no such provision in the statute under consideration.

When the legislature in Illinois adopted the Act of 1901, statutes of this kind had been construed by a great number of states, and a similar statute had been construed by the Supreme Court of the state in *People* v. *Western S. F. Society*, *supra*, and by the ordinary rules of construction it is to be presumed the legislature intended to adopt the construction which has always been placed upon such laws, and to restrict the exemption to corporations and institutions of the state, and, in doing so, simply

created a class which was exempted from the general provisions of the law.

(c) THE AMENDATORY ACT OF 1901 AS CONSTRUED IS NOT REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Section 1 of the Fourteenth Amendment is as follows:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Plaintiff in error is neither a "citizen" nor a "person," nor "within the jurisdiction" of the state of Illinois, within the meaning of the Fourteenth Amendment.

In *Blake* v. *McClung*, 172 U. S., 239, the question arose upon a statute of Tennessee which enabled foreign corporations to do business in the state, but provided that "creditors who may be residents of this state shall have priority in the distribution of assets, or subjection of the same, or any part thereof, to the payment of debts over all similar contract creditors being resident of any other country or countries," etc. Hull Coal and Coke Co., a corporation of Virginia, was a creditor of the company whose assets were being distributed, and denied the validity of the statute upon the ground that, as a "citizen" of another state, it was denied

privileges and immunities of the citizens of Tennessee, contrary to Section 2, Article 4, of the Constitution, and its privileges and immunities as such citizen were denied contrary to the Fourteenth Amendment, and also as a "person" it was deprived of its property without due process of law and denied the equal protection of the laws, contrary to the Fourteenth Amendment.

This court held, pages 259 and 261:

> "But it is equally well settled, and we now hold, that a corporation is not a citizen within the meaning of the constitutional provision that 'the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.' The Virginia corporation, therefore, can not invoke that provision for protection against the decree of the state court denying its right to participate upon terms of equality with Tennessee creditors in the distribution of the assets of the British corporation in the hands of the Tennessee court."
>
> "Since, however, a corporation is a person within the meaning of the Fourteenth Amendment, may not the Virginia corporation invoke for its protection the clause of the Amendment declaring that no state shall deprive any person of property without due process, nor deny to any person within its jurisdiction the equal protection of the laws?
>
> "We are of the opinion that this question must receive a negative answer.
>
> "It is equally clear that the Virginia corporation cannot rely upon the clause declaring that no state shall 'deny to any person within its jurisdiction the equal protection of the laws.'
>
> "It does not appear to have been doing business in Tennessee under the statute here involved or under any statute that would bring it directly under the jurisdiction of the court

> of Tennessee by service of process on its officers or agents. Nor do we think it came within the jurisdiction of Tennessee within the meaning of the amendment simply by presenting its claim in the state court and thereby becoming a party to this cause. Under any other interpretation the Fourteenth Amendment would be given a scope not contemplated by its framers nor by the people nor justified by its language. We adjudge that the statute, so far as it subordinates the claims of private business corporations not within the jurisdiction of the state of Tennessee (although such private corporations may be creditors of a corporation doing business in the state under the authority of that state) to the claims against the latter corporation of creditors residing in Tennessee, is not a denial of the equal protection of the laws secured by the Fourteenth Amendment to persons within the jurisdiction of the state, however unjust such a regulation may be deemed."

This case is cited as being conclusive on the constitutional questions raised by counsel for plaintiff in error.

The claim that plaintiff in error has been deprived of its property without due process of law is also without merit because it is the well established construction of the Fourteenth Amendment that when the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of the state court does not deprive the unsuccessful party of his property without due process of law.

See, *Central Land Co.* v. *Laidley,* 159 U. S., 103-112.

Marchant v. *Pennsylvania R. R. Co.,* 153 U. S., 380-386.

It is also our contention that the amendatory act is not repugnant to the Fourteenth Amendment for the further reason that the right to acquire property of a decedent by descent or will is purely a creature of statute and within legislative control, and in the language of the court in *Magoun* v. *Bank*, *supra*,

> "If a state may deny the privilege all together, it follows that when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policies."

At page 293 in the same case the court says:

> "In some circumstances it may not tax A more than B, but if A be of a different trade or profession than B, it may. And in matters not of taxation, if A be a different kind of corporation than B it may subject A to a different rule of responsibility to servants than B, to a different measure of damages than B, and it permits special legislation in all of its varieties (quoting authority). In other words, the state may distinguish, select, and classify objects of legislation, and necessarily this power must have a wide range of discretion."

In the same case the language of Chief Justice Fuller in *Giozza* v. *Tiernan*, 148 U. S., 657, is adopted, where it is held the Fourteenth Amendment was not intended to compel the state to adopt an iron rule of equal taxation, and Justice Bradley is quoted as follows:

> "It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions and vary the rates of excise upon various prod-

> ucts. It may tax real estate and personal property in a different manner. It may tax visible property only and not tax securities for payment of money. It may allow deductions for indebtedness or not allow them."

Justice Miller said in *Davidson* v. *New Orleans*, 96 U. S., 97-105, the Federal Constitution imposes no restraints on the state in regard to unequal taxation.

It was said in *Merchants Bank* v. *Pennsylvania*, 167 U. S., 461, that the whole argument of a right under the Federal Constitution to challenge the tax on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in *Bells Gap Railroad* v. *Pennsylvania*, 134 U. S., 232.

A great number of these cases are cited and commented upon in *Magoun* v. *Bank, supra.*

A statute of New York provided in effect that lands could only be devised to such natural persons as are by law capable of holding by devise or to such corporations as the state had expressly authorized by charter or by statute to take by devise. Charles Fox, by his will, devised and bequeathed certain property to the United States to assist in discharging the debt created by the war of the Rebellion.

The heirs contested the will on the ground that the testator could only give his property by will to such corporation as was created by the laws of the State of New York and were authorized by it to take by devise and that the United States was not such a corporation. The contention of the heirs was sustained by the Surrogate Court and that decision was

sustained by the Supreme Court and the Court of Appeals, from which a writ of error was prosecuted to the United States Supreme Court, and the question is decided in *United States* v. *Fox*, 94 U. S., 315.

The testator died in 1870. The act of New York in express terms prohibited a devise to a foreign corporation and discriminates between a foreign corporation and one created by the statutes of that state. Justice Field, in deciding the case, at page 320, says:

> "The power of the state to regulate the tenure of real property within her limits and the modes of its accession and transfer and the rules of its descent and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted.
>
> "The power of the state in this respect follows from her sovereignty within her limits as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the Federal government."

The opinion concludes with the statement:

> "A devise to the United States of real property situated in that state is therefore void."

This case has many times been cited with approval.

Upon this doctrine a number of modern cases might also be considered, and among them

Kochersperger v. *Drake*, 167 Ill., 122.

Billings v. *People*, 189 Ill., 472 (188 U. S., 97).

United States v. *Perkins*, 163 U. S., 625.

Blackstone v. *Miller*, 188 U. S., 189.

As well as the case of *Blake* v. *McClung, supra*, and many kindred cases, such as *Kidd* v. *Alabama*, 188 U. S., 730. Yet we believe the recent decision of this court in *Campbell* v. *California*, 200 U. S., 87, is conclusive. There it is held that the Fourteenth Amendment does not deprive a state of the power to regulate and burden the right to inherit, but at the most can only be held to restrain such an exercise of power as would exclude the conception of judgment and discretion, and which would be obviously arbitrary and unreasonable as to be beyond the pale of governmental authority.

The questions involved in *Humphreys* v. *State*, 70 Ohio St., 67 (65 L. R. A., 776), are, it is submitted, precisely the same questions presented by this record, because the statute construed in that case expressly limited the exemptions to corporations of the State of Ohio.

The court expressly holds, after a discussion of many authorities, that the exemptions provided for in the statute would be limited to corporations formed in the State of Ohio without this express provision being in the statute, and that such limitation would not be repugnant to the Fourteenth Amendment.

The case is a very important one and decides the principal questions now before this court in this case. Being only the decision of a state court, however, it is used here merely as a clear statement of the doctrine upon which we claim this court should affirm the judgment of the Supreme Court of Illinois. The decision was based upon the principle that the state is sovereign as to the property within the state and as an attribute of its sovereignty has

a right to provide how it shall be disposed of on the death of the owner, and it has a right to say that it will retain for its own purposes such portion within reasonable limits as it shall determine, and that in the devolution of property by reason of the death of the owner it may regulate the amount which it will retain by reason of the classes of persons or corporations which it will permit to take the remainder. It may provide an exemption in favor of the life tenant depending on the relation of the remainder man to the testator, it may provide an exemption and at a rate depending on the relationship of the testator to the beneficiary, it may determine that certain classes shall be wholly exempt, and it may provide that no non-resident corporation shall take by devise or descent any portion of the property within the jurisdiction of the state, and if it can so provide, it may limit the amount or fix the per cent to be deducted from that class of corporations or persons not residing within the limits of the state.

The other exemptions referred to relate to the relationship of the beneficiaries to the testator or intestate. This restriction or exemption as to a non-resident corporation is regulated or may be regulated by the relationship of the beneficiary to the state itself, so that when the State of Illinois, or its courts, say that a charitable or educational institution of another state shall pay a tax of two or six per cent on the valuation of the property which is permitted by the laws of Illinois to go to it by the death of the owner, it is only exercising the same power and jurisdiction which enables it

to lawfully say that no portion or part of such property shall go to a corporation of another state, as in *U. S.* v. *Fox, supra.*

It is so well settled in *Magoun* v. *Illinois Trust & Savings Bank, supra,* and many of the other cases herein referred to, that an inheritance tax is not a tax on property but a tax upon the right to succeed to the property, that further argument or citation of authority will be unnecessary in order to keep that doctrine before the court in passing upon the other questions involved.

(D) IF THE AMENDATORY ACT OF 1901, AS CONSTRUED BY THE SUPREME COURT OF ILLINOIS, IS REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THEN THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS SHOULD BE AFFIRMED.

Upon this proposition it is probably not even necessary to suggest that inasmuch as the right of plaintiff in error to the exemption claimed by it is dependent upon the validity of the Amendatory Act of 1901, then if this court should, for any reason, hold the act to be unconstitutional, the right of plaintiff in error to an exemption from the tax must fail with the act, and therefore, the judgment of the Supreme Court of Illinois, imposing the tax, should be affirmed in that case.

Conclusion.

After a careful examination of all the authorities found, it is submitted there are but two cases which may be referred to as being in conflict with the position here taken, and those are the

Mahone Estate, 133 Cal., 180, and
Johnson's Estate, 139 Cal., 532.

These decisions, however, are of no weight, if they ever were, by reason of the more recent ruling of this court in the case of *Campbell* v. *California, supra*, construing the same statute.

It is unnecessary to suggest the question involved in this record is of great importance to the State of Illinois. The court will take notice of the fact that the inheritance tax law of the state is now yielding to the state an enormous revenue no small portion of which is derived from taxes imposed on the right of non-resident institutions to take the property of citizens of our state by devise.

The full text of the opinion of the Supreme Court of Illinois in this case will be found on page 28 of the transcript of the record filed herein, and is reported in Volume 216, Illinois Supreme Court Reports, page 23.

For the foregoing reasons it is respectfully submitted the judgment of the Supreme Court of Illinois should be affirmed.

William H. Stead,
Attorney General of the State of Illinois.

Edwin M. Ashcraft,
Of Counsel.